

**DECLARATION OF CARL
SPILLY ISO GOOGLE
LLC'S MOTION IN LIMINE
NO. 3 TO EXCLUDE
EVIDENCE AND
ARGUMENT REGARDING
PRODUCTS, SERVICES,
REGULATIONS, AND DATA
FLOWS OUTSIDE OF THE
SCOPE OF PLAINTIFFS'
ALLEGATIONS**

**Redacted Version of
Document Sought
to be Sealed**

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16 *Attorneys for Defendant Google LLC*

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

19 CHASOM BROWN, *et al.*, individually and on
20 behalf of themselves and all others similarly
situated,

21 Plaintiffs,

22 v.

23 GOOGLE LLC,

24 Defendant.

25 Case No. 4:20-cv-03664-YGR-SVK

26 **DECLARATION OF CARL SPILLY IN
27 SUPPORT OF GOOGLE LLC'S MOTION
28 IN LIMINE NO. 3 TO EXCLUDE
EVIDENCE AND ARGUMENT
REGARDING PRODUCTS, SERVICES,
REGULATIONS, AND DATA FLOWS
OUTSIDE OF THE SCOPE OF
PLAINTIFFS' ALLEGATIONS**

Judge: Hon. Yvonne Gonzalez Rogers

Trial Date: January 29, 2024

1 I, Carl Spilly, declare as follows:

2 1. I am a member of the bar of the District of Columbia and an associate with Quinn
3 Emanuel Urquhart & Sullivan, LLP, attorneys for Defendants Google LLC (“Google”) in this
4 action. I make this declaration of my own personal, firsthand knowledge, and if called and sworn
5 as a witness, I could and would testify competently thereto.

6 2. Attached hereto as Exhibit A is a list of Plaintiffs’ proposed exhibits that Google
7 seeks to exclude for the reasons discussed in its motion.

8 3. Attached hereto as Exhibit B is a list of Plaintiffs’ proposed exhibits that Google
9 seeks to exclude for the reasons discussed in its motion.

10 4. Attached hereto as Exhibit C is a list of Plaintiffs’ proposed exhibits that Google
11 seeks to exclude for the reasons discussed in its motion.

12 5. Attached hereto as Exhibit D is an excerpt of the transcript of the February 18, 2022
13 Deposition of Rory McClelland.

14
15 I declare under penalty of perjury of the laws of the United States that the foregoing is true
16 and correct.

17 Executed in Washington, DC, on October 17, 2023.

18 By /s/Carl Spilly
19 Carl Spilly

20
21
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26
27
28

EXHIBIT A

(IRRELEVANT FOREIGN AND DOMESTIC INVESTIGATIONS AND LITIGATION)

Ex No.	Bates
61	GOOG-BRWN-00634608
380	GOOG-BRWN-00017195
708	GOOG-CABR-04588763

EXHIBIT B

(NON-BROWSER PRODUCTS AND SIGNED-IN USERS)

Ex. No.	Bates
27	GOOG-BRWN-00226894
30	GOOG-BRWN-00225677
38	GOOG-BRWN-00847949
54	GOOG-CABR-04739070
57	
61	GOOG-BRWN-00634608
67	GOOG-BRWN-00207876
75	GOOG-BRWN-00433503
86	GOOG-CABR-00800579
88	GOOG-BRWN-00067645
89	GOOG-CABR-04798344
91	GOOG-CABR-00413286
98	GOOG-BRWN-00615433
208	GOOG-BRWN-00176481
212	GOOG-CABR-00456088
227	GOOG-CABR-04734899

Ex. No.	Bates
247	GOOG-CABR-04344015
248	GOOG-CABR-05315806
312	GOOG-CABR-04524174
322	GOOG-CABR-00891788
323	GOOG-BRWN-00571408
324	GOOG-BRWN-00078322
326	GOOG-BRWN-00436367
358	GOOG-CABR-04207527
359	GOOG-CABR-05291653
360	GOOG-CABR-03662816
368	GOOG-BRWN-00176684
385	GOOG-CABR-05144251
412	GOOG-BRWN-00027314
416	GOOG-BRWN-00035610
420	GOOG-BRWN-00144320
421	GOOG-BRWN-00148029
441	GOOG-BRWN-00432838

Ex. No.	Bates
450	GOOG-BRWN-00536949
454	GOOG-BRWN-00571757
455	GOOG-BRWN-00572220
455	GOOG-BRWN-00572220
459	GOOG-BRWN-00613801
487	GOOG-CABR-00050450
495	GOOG-CABR-00399412
507	GOOG-CABR-00894548
509	GOOG-CABR-03618860
512	GOOG-CABR-03652751
531	GOOG-CABR-04009739
541	GOOG-CABR-04141705
543	GOOG-CABR-04177585
575	GOOG-CABR-04695140
603	GOOG-CABR-05136994
750	GOOG-BRWN-00026161
752	GOOG-BRWN-00026485

Ex. No.	Bates
763	GOOG-BRWN-00031631
764	GOOG-BRWN-00032186
771	GOOG-BRWN-00054985
774	GOOG-BRWN-00057404
775	GOOG-BRWN-00057878
776	GOOG-BRWN-00057885
780	GOOG-BRWN-00070268
783	GOOG-BRWN-00078324
784	GOOG-BRWN-00078334
785	GOOG-BRWN-00078336
790	GOOG-BRWN-00078386
804	GOOG-BRWN-00150771
806	GOOG-BRWN-00157519
808	GOOG-BRWN-00165695
837	GOOG-BRWN-00184947
848	GOOG-BRWN-00432247
849	GOOG-BRWN-00432577

Ex. No.	Bates
872	GOOG-CABR-00130845
875	GOOG-CABR-00378096
876	GOOG-CABR-00399866
885	GOOG-CABR-00550150
887	GOOG-CABR-00891766
891	GOOG-CABR-03650185
896	GOOG-CABR-03654277
897	GOOG-CABR-03655476
900	GOOG-CABR-03660852
903	GOOG-CABR-03664108
904	GOOG-CABR-03665215
919	GOOG-CABR-04469657
920	GOOG-CABR-04469855
928	GOOG-CABR-04719378
929	GOOG-CABR-04724955

Ex. No.	Bates
931	GOOG-CABR-04767620
933	GOOG-CABR-04781974
936	GOOG-CABR-05296460
939	GOOG-CABR-05786200
941	GOOG-CABR-05865867

EXHIBIT C

(FEATURES THAT WERE NEVER IMPLEMENTED)

Ex. No.	Bates
21	GOOG-BRWN-00406065
30	GOOG-BRWN-00225677
46	GOOG-CABR-03750737
55	GOOG-BRWN-00634444
65	GOOG-BRWN-00152199
68	GOOG-CABR-04991831
69	GOOG-CABR-04511160
72	GOOG-CABR-05269357.RR
84	GOOG-BRWN-00650016
87	GOOG-CABR-00413861
425	GOOG-BRWN-00155943
458	GOOG-BRWN-00613409

Ex. No.	Bates
768	GOOG-BRWN-00048078

EXHIBIT D

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Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

- - - - -
CHASOM BROWN; MARIA NGUYEN; WILLIAM
BYATT; JEREMY DAVIS; and CHRISTOPHER
CASTILLO, individually and on behalf
of all other similarly situated,

Plaintiffs,
No. 5:20-cv-03664-LHK
-against-

GOOGLE LLC,

Defendant.

- - - - -
Zoom video conference deposition of
RORY McCLELLAND, taken pursuant to
notice, was held remotely, commencing
February 18, 2022, 5:30 a.m. Eastern
Standard Time, before Leslie Fagin, a
Stenographic Court Reporter and Notary
Public in the State of New York.

- - -

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New York, New York 10018
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Page 2

1
2 APP E A R A N C E S:
3 (All Parties Present Via Zoom.)
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24 ELLIOTT McGRAW, ESQUIRE
25

26 ALSO PRESENT:
27
28 LESLEY WEAVER, ESQUIRE
29 BLEICHMAR FONTI
30 For the Calhoun Plaintiffs
31
32 VANESSA WHEELER, Exhibit Tech
33 Magna Legal Services
34
35

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Page 27

1 R. McClelland

2 A. The same argument that it requires
3 a high level of understanding of how the web
4 works in order to understand the level of
5 protection afforded and the average user does
6 not have that level of understanding.

7 Q. Does Incognito mode obscure
8 location?

9 A. No, it does not.

10 Q. Does Incognito mode provide
11 anonymity?

12 MS. CRAWFORD: Objection, vague and
13 ambiguous as to anonymity.

14 You can answer.

15 A. To a degree, it does, it provides
16 isolation of browsing activity and allows any
17 user at any time to present to a web server
18 with an empty clean slate as a brand-new
19 user.

20 Q. If you go to the next page ending
21 in 404, where it says, if you look to the
22 left of the bottom, the first point, it says,
23 Majority of user, it's a typo, expect no
24 session-based tracking.

25 Do you see that?

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Page 28

1 R. McClelland

2 A. I do, yes.

3 Q. Can you elaborate more on this user
4 expectation?

5 MS. CRAWFORD: Objection,
6 foundation.

7 A. My understanding is that users
8 expect Incognito mode or private browsing
9 modes generally to present all in session ad
10 tracking when, in reality, the tracking is
11 limited to that single Incognito session, but
12 within the session, the tracking does occur.

13 Q. As far as you know, has Google ever
14 considered stopping session-based tracking?

15 MS. CRAWFORD: Objection.

16 A. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 Q. Were you involved in that proposal?

22 A. I was, yes.

23 Q. What happened with that proposal?

24 A. It was a contentious proposal.

25 There were two clear groups, two different

CONFIDENTIAL

Page 29

1 R. McClelland

2 points of view, opinions. There was the view

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 Those two proposals were taken

13 forward through an escalation and,

14 ultimately, [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 Q. Which view did you have, was it the

19 first one or the second one, about [REDACTED]

20 [REDACTED]

21 A. My preference was for the first one

22 as a product manager, your role is to

23 represent the user and the user problem and

24 to argue for them.

25 That said, I respected both points

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Page 30

1 R. McClelland
2 of view. It wasn't a clear right or wrong,
3 just two different ways of moving forward.

4 Q. Who made the ultimate decision to
5 [REDACTED]?

6 MS. CRAWFORD: Objection,
7 foundation.

8 You can answer.

9 A. It went to an escalation meeting.
10 I think it was a woman called Parisa Tabriz,
11 I struggle to remember her name, but her
12 first name was Parisa. She was a director of
13 engineering at the time and her counterpart
14 from the products side, Margret Schmidt.

15 Q. Do you remember the name of this
16 proposal, if it had one?

17 A. No, I'm afraid. If you were to
18 give it to me, I might be able to recognize
19 it rather than recall it.

20 Q. Please take a look at the page
21 ending in 409.

22 Do you see at the top, it says,
23 What are any risks or potential moments when
24 trust might be lost with participants while
25 in private mode?

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1 CERTIFICATE
2
3
4 I HEREBY CERTIFY that the foregoing proceedings
5 were duly sworn by me and that the proceedings are a
6 true record.

7 
8 _____
9

10 Leslie Fagin,
11 Registered Professional Reporter
12 Dated:

13 (The foregoing certification of this transcript
14 does not apply to any reproduction of the same by any
15 means, unless under the direct control and/or
16 supervision of the certifying reporter.)